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the corporation; the corporation being a creature of the state, it may prescribe the terms of its existence in the form of a bonus, a tax for the privilege of exercising its functions in the state, and that tax, as Judge FIELD says, may be in the form of a tax upon its loans. But the tax here was not a tax upon the corporation; it was a tax upon the creditors of the corporation, upon parties contracting with a corporation at a time when the state which created it had not burdened it with a tax upon its borrowing power, and was a violation of the obligation of the contract between the borrower and lender. The shares of stock in the National Banks are an exception to the rule stated in this section; the Acts of Congress as to them annul the general rule and impart to such shares for some purpose the local character and fixity of real estate. They are taxed where the bank is situated: *Providence Inst. for Savings & Jewell v. City of Boston*, 101 Mass. 575: *Tappan v. Merchants' Nat. Bank*, 19 Wall. 490.

W. H. B.

NORFOLK, VA.

(To be continued.)

RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

CHARLES F. BOLLMAN v. CLARK M. LOOMIS.

The policy of the law forbids that a person acting as the friend and confidential adviser of a purchaser, should at the same time be secretly receiving compensation from the seller for effecting the sale; and a contract for such compensation is void.

ASSUMPSIT, upon the common counts; brought by appeal from a justice to the Court of Common Pleas of New Haven county. The following facts were found by the court:

In the latter part of the year 1872, Mrs. W. C. Robinson called at the store of the defendant to look at pianos which he kept for sale. She saw there one which pleased her, so far as the outside appearance was concerned, but not being willing to purchase entirely upon her own judgment, it was suggested that the plaintiff, who was a friend of F. A. Robinson, a brother of her husband and an acquaintance of hers, should examine the instrument. The plaintiff was to some extent an expert, and his judgment was much relied upon by the Robinsons. Before this time the

plaintiff had been an occasional visitor at the store of the defendant, and was well known to the defendant as an expert. The plaintiff and F. A. Robinson visited the store of the defendant together, and the plaintiff, in the presence of the defendant, examined the piano, and found the tone to be good and the instrument a good one, and so expressed himself. His opinion was communicated to Mrs. Robinson. The plaintiff did everything to this point of time in the utmost fairness and good faith towards the Robinsons, and gave them the benefit of his unbiased judgment. Mrs. Robinson did not however immediately purchase, and the plaintiff afterward happening in the store, the defendant asked him why Mrs. Robinson did not buy the piano. The plaintiff told him that he did not know, and explained the relation he sustained toward the Robinsons. The defendant knew that he was acting for the Robinsons, and that the Robinsons relied upon his judgment, and for this reason he requested him to go further than he had before gone, and to endeavor to effect a sale, and to urge the piano upon the Robinsons. This the plaintiff promised to do, and did. A sale was effected, and the plaintiff's exertions and recommendations were instrumental in effecting it. Neither of the Robinsons at any time knew that the plaintiff was acting for the defendant, and the plaintiff acted for the Robinsons merely as a friend, without reward or pay. After the sale was effected the plaintiff demanded payment for his services, and the defendant then denied that he had ever employed him; but the parties finally settled upon the sum of \$20 as the amount to be paid.

Upon these facts the court rendered judgment for the plaintiff for \$20 damages and his costs, and the defendant brought the the record before this court by a motion in error.

Newton and Arvine, for the plaintiff in error.

Bollman, for the defendant in error.

FOSTER, J.—The principle involved in this case is doubtless of importance; but the amount involved, pecuniarily, is small; so small, as in our opinion hardly to justify bringing the matter here to be decided.

There was gross duplicity on the part of the plaintiff in acting as the confidential friend and adviser of the purchaser of the piano, and at the same time as agent of the vendor, employed by him expressly to effect a sale.

The party proposing to purchase was deceived. Instead of getting, as he supposed he was, the opinion of the plaintiff as an expert, without bias and without interest, acting merely as a friend, the plaintiff was in fact acting as the agent of the owner, and charging fees for his services. A sale having been effected through his influence, this suit was brought to obtain a compensation.

We think there should be no recovery. We reach this result not out of any regard for the defendant; he is as fully implicated in the deception practised on the purchaser as the plaintiff himself. The rule in such cases is, that the law leaves the parties where it finds them. The transaction was inconsistent with fair dealing, contrary to sound policy and offensive to good morals.

We do not say that the plaintiff or defendant committed a positive fraud. The plaintiff may have said nothing as to this piano which he did not believe to be true, and the defendant may have demanded and obtained for it no more than it was really worth. But the means resorted to to effect the sale, deceived the purchaser, and were in violation of confidence. Such contracts and acts are deemed equally reprehensible with positive fraud. They are within the same reason and mischief as contracts made and acts done with an evil intent, and are therefore prohibited by law.

Cases of this character, though differing widely in their details, are unfortunately not rare in courts of justice. In *Carter v. Boehm*, 3 Burr. 1910, Lord MANSFIELD said: "Good faith forbids either party, by concealing what he privately knows, to draw another into a bargain from his ignorance of that fact and his believing the contrary." In *Chesterfield v. Janssen*, 2 Ves. 155, s. c. 1 Atk. 352, Lord HARDWICKE said: "Fraud may be collected or inferred, in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons, not parties to the fraudulent agreement." In *Fuller v. Dame*, 18 Pick. 481, Chief Justice SHAW said: "The law avoids contracts and promises made with a view to place one under wrong influences; those which offer him a temptation to do that which may affect injuriously the rights and interests of third persons." And again: "If such advice and solicitation, thus understood to be pure and disinterested, may be justly offered from mercenary motives, they would produce all the consequences of absolute misrepresentation and falsehood."

This case comes within a class of cases described in the books as "poundage for recommending customers to buy." The case of

Wyburd v. Stanton, 4 Esp. 179, is directly in point. That was an action of assumpsit for goods sold and delivered. The plea was the general issue and set-off. One part of the set-off was for certain poundage and reward before that time agreed to be paid, and then due and payable from the plaintiff to the defendant, upon and in respect of certain goods and merchandise before that time sold and delivered by the plaintiff to one Andrew, for and in consideration of the defendant's having recommended the said Andrew to buy the said goods and merchandise from the plaintiff. Upon this being stated, Lord ELLENBOROUGH said he thought this demand could not be supported. It was a fraud on third persons. It was accordingly rejected.

We think this principle a salutary one, and applicable to this case. There is therefore manifest error in the judgment below.

There is no principle of the law of contracts of more vital force than that which requires that the same party shall not be interested or act, either as principal or agent, upon both sides. It is but the adoption and enforcement of that fundamental rule of Christian ethics, "ye cannot serve two masters." The rule extends to a large number of those legal relations, resting upon confidence, trust and dependence upon one side, and advice, direction, superiority and control upon the other. Thus an agent will not be allowed to buy or sell for his principal, of any corporation or joint stock company in which the agent is interested, without acquainting his principal with all the facts known to himself, and allowing him to judge for himself, the principal being of full age and competency to act understandingly and prudently: *Taylor v. Salmon*, 4 Myl. & Cr. 139. So one cannot make a binding contract where he acts as the agent of both parties: *N. Y. Central Ins. Co. v. Nat. Protection Ins. Co.*, 20 Barb. 470, where the cases are very extensively cited and judiciously analyzed by MASON, J. And in the very recent case of *Raisin v. Clark*, 41 Md. 158, the court held that a real estate broker, who was employed to sell a property, and effected

an exchange for other real estate, could not charge the owner of the latter a commission. The law does not permit the broker in such case to act as agent of both parties even by express agreement. Such an agreement would not be enforced; and a custom of brokers to receive a half commission from each party in an exchange, was held void as against a settled principle of law. So the trustee cannot become interested in the purchase of any portion of the trust estate: *Parkhurst v. Alexander*, 1 Johns. Ch. 394. And the purchase of any portion of the bankrupt estate by the assignee will be treated as a trust for the benefit of the creditors: *Ex parte Lacey*, 6 Ves. 625. And the same rule will extend to executors and administrators, and to all persons acting as trustees for sale. And the surety is not allowed to purchase the debt for his own benefit, but it will enure to the benefit of the principal debtor: *Reed v. Norris*, 2 Myl. & Cr. 374. So an agent who discovers a defect in the title to land of his principal cannot procure the title for himself: *Ringo v. Binns*, 10 Pet. (U. S.) 269. The principle of these cases is now universally recognised. It is very learnedly discussed by two eminent English chancellors, in the

House of Lords, THURLOW and LOUGHBOROUGH, in the early and leading case of *York Building Co. v. Mackenzie*, 8 British Parl. Cases, in App.; 3 Paton 378. The rule extends to directors in joint stock corporations, so that they cannot legally derive any personal benefit from any of their transactions on behalf of the company: *Great Luxembourg Ry. v. Magnay*, 25 Beav. 586; 4 Jur. N. S. 839. A director cannot recover for work erected for the benefit of the company, if he was himself interested in the contract: *Stears v. Southend Gas Light & Coke Co.*, 9 C. B. N. S. 180; 7 Jur. N. S. 447.

The rule extends to the avoiding of all contracts procured by taking advantage of the relation of attorney and client: *Corley v. Lord Stafford*, 1 De Gex & Jones 238; *Hobday v. Peters*, 6 Jur. N. S. 794; 8 W. R. 512. The burden, in all cases between attorney and client, is upon the attorney to show that the transaction was entirely equal and fair: *Lyddon v. Moss*, 5 Jur. N. S. 635; *Morgan v. Higgins*, 1 Giff. 270. All securities between attorney and client are presumptively void. The burden rests upon the attorney to support them: *Brown v. Bulkley*, 1 McCarter 457.

We need not here pursue this question further. The elementary books and the reports abound in wise rules and much beautiful moralizing upon them. The rule is even more stringent as between trustee and *cestui que trust*, than between attorney and client, where we have seen it is only required to show the transaction fair; but in the former case the same is equally void, at the election of *cestui que trust*, even where it appears that no advantage was taken: *Cane v. Lord Allen*, 2 Dow 289. Ld. BROUGHAM, Chancellor, in *Hunter v. Atkins*, 3 Myl. & K. 113, puts the case of attorney and client upon the same ground, and we see no reason for any distinction in the cases. But, as we said, after much beautiful moralizing, we fear this very avenue to fraud and corruption is one that it will be found, practically, most difficult to close up. Mere rules of law, or morality, seem to act as a kind of compensation in the minds of too many in our day, perhaps in all times, for giving more or less countenance to exceptional iniquities, upon the principle that all rules must and will have some exceptions, till the latter overbalance and outnumber the former.

I. F. R.

Supreme Court of Errors of Connecticut.

HUNGERFORD'S APPEAL FROM PROBATE.

A former recovery, to become a bar, must be for the same *cause* of action, but not necessarily in the same *form* of action.

THIS was a claim presented to the commissioners by the appellant as follows:

“Estate of R. D. Hicks to Dana L. Hungerford, Dr.
 “February 1st 1870, to my services in your business, endeavoring to sell the Clark House in Winsted, from the 1st day of December 1869, to the 1st day of February 1870, and cash expenses in said business, \$1000.”